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GRACO MINNESOTA INC
PO BOX 1441
MINNEAPOLIS, MN 55440

EXAMINER	
CARTAGENA, MELVIN A	

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/528,524
Filing Date: March 18, 2005
Appellant(s): KOCH ET AL.

Douglas B. Farrow
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed May 18, 2009 appealing from the Office action mailed November 18, 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is incorrect.

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows: Appellant omitted the rejection to claims 1-4 under 35 U.S.C. 102 (b) over Few; However, Appellant's detail arguments with respect to the rejection appear to indicate the omission was a typographical error.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,601,413	LANGLEY et al.	2-0997
5,743,357	FEW	4-1998
6,729,364	FEW et al.	5-2004

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 5 and 6 stand rejected under 35 U.S.C. 102(b) as being anticipated by US 5,601,413 to Langley et al.

Langley shows a pumping system as seen in Fig. 1, having a pump 11 driven by motor 12, a flow meter 20 incorporated into and as part of the pump and mounted onto the dispensing hose, see Fig. 2, a suction tube 32, a bulk container 34, a dispense valve 24, a dispense hose 22 and a check valve 27 requiring a predetermine non-negligible fluid pressure to open.

Claims 1-4 stand rejected under 35 U.S.C. 102(b) as being anticipated by US 5,743,357 to Few.

Few shows an oil dispenser as seen in Figs. 1, 5 and 6, having a pump 58 driven by a motor, a flow meter 38, a suction tube 154, a bulk container 204, dispenser valve 26 connected to the device and mounted on the same housing 12 as the display panel 21, dispensing hose 74 and a hose storage reel 60 as part of the dispensing assembly.

Claim 7 stands rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,601,413 to Langley et al. in view of US 6,729,364 to Few at al. ('364).

Langley shows all claimed features as discussed above except for the use of wireless communication between the dispensing valve and the flow meter. Few shows an integrated

manifold assemble as seen in Figs. 1 and 3, having a dispensing valve 70 actuated with a remote pendant 230. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to modify the device of Langley to include a remote communication between the dispensing valve and the flow meter to automatically stop the flow of fluid once the desired volume has been dispensed while using a conventional delivery hose without any hard wiring as taught by Few.

Claim 8 stands rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,601,413 to Langley et al.

Langley shows all claimed features as discussed above but is silent about the type of pump. The type of pump use presents no novel or unexpected result over the pump used in the references. The selection of a pump depends on the properties of the fluid to be pumped, such as the fluid viscosity, fluid density, etc. The selection of the type of pump in lieu of those used in the references solves no stated problem and would be an obvious matter of design choice within the skill of the art. In re Launder, 42 CCPA 886, 222 F.2d 371, 105 USPQ 446 (1955); Flour City Architectural Metals v. Alpana Aluminum Products, Inc., 454 F. 2d 98, 172 USPQ 341 (8th Cir. 1972); National Connector Corp. v. Malco Manufacturing Co., 392 F.2d 766. 157 USPQ 401 (8th Cir.) cert. denied, 393 U.S. 923, 159 USPQ 799 (1968).

(10) Response to Argument

In response to appellant's argument that the references fail to show certain features of appellant's invention, it is noted that the features upon which appellant relies (i.e., plug and play system, well suited for mounting on a drum and a non spring-loaded check valve) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification,

limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to appellant's argument that the references fail to show a check valve opening at a predetermined no-zero amount of pressure, any check valve needs a predetermined non-zero amount of pressure to open; at zero pressure there would be no fluid flow through a system, even with the absence of any element restricting the flow.

In response to appellant's argument that there is no communication between the flow meter, the dispensing valve and the pump, the flow meter 20, the dispensing valve 24 and the pump 11 are mounted onto the same dispensing hose, see Figs. 1 and 2, the pump, the flow meter and the dispensing valve are in fluid communication by the dispensing hose.

In response to appellant's argument that there is no wireless communication between the dispensing valve and the flow meter in the dispensing device of Few ('364), the elements affecting dispensing, including the dispensing valve, flow determining parameters and pump, are in communication with each other by the controller, see columns 8 and 9, lines 6-67 and 1-7 respectively, and can be controlled remotely, see column 8, lines 26-29 and column 20, lines 48-59.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Melvin A. Cartagena/

Examiner, Art Unit 3754

Conferees:

/Kevin P. Shaver/

Supervisory Patent Examiner, Art Unit 3754

/Nathan J. Newhouse/

Supervisory Patent Examiner, Art Unit 3782